IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.14417 of 2006
DATE OF DECISION:11.9.2006
***

Executive Engineer, Construction Division, PWD (B&R), Chandigarh.

..PETITIONER

VS.

Paramjit Kumar and another.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.

HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Ajay Chaudhary, DAG Haryana
for the petitioner.
***

JUDGMENT:

The petitioner-department has challenged the award dated 4.4.2006 passed by the Labour Court. By dint of the impugned award, the Labour Court ordered re-instatement of respondent No.1 with continuity of service and 50% back wages.

It transpires from the records that the workman raised an industrial dispute challenging the action of the petitioner-department of terminating his service. It was his case that he served the petitioner-department as General Operator w.e.f. 5.3.1994 till his services were illegally terminated on 1.11.1996, without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereafter referred to as the Act). On the other hand, the stand of the petitioner-department was that the workman was engaged on daily wage basis on muster rolls on 5.3.1994. However, the services of the workman were terminated on 31.7.1994 in

view of the Government instructions dated 17.8.1994 directing dispensing with the services of employment made on muster rolls after 1.1.1993. During that period, the workman had not completed 240 days, as such, there was no necessity to comply with the provisions of Section 25-F of the Act. Upon the pleadings of the parties, the issues were settled by the Labour Court. The lis was adjudicated upon and vide award dated 10.2.2003, the Labour Court answered the reference against the workman. Feeling aggrieved, the workman approached this Court by way of CWP No.670 of 2004, questioning the legality of the afore-stated award. This Court, vide order dated 7.12.2005 disposed of the afore-said writ petition with the following observations:-

> "(a) The award of the Labour Court shall be kept in abeyance for six months and the Petitioner will be given an opportunity to lead further evidence on the basis of the certified copies which are now claimed to be in his possession and which were marked Exhibits in reference case No.337 of 2003 and 335 of 2003.
>
> (b) It will be open to the Labour Court to consider, on the basis of these documents, as to whether the observations made in paragraph 21 of the impugned award needs modification. If on the basis of the aforementioned documents sought to be now brought on record, the Labour Court is satisfied that the observations made in paragraph 21 requires modification, then it may do so but if it is satisfied that notwithstanding the production of these documents (which were exhibits in the aforementioned two Reference Cases), no case is still made out, then in that event, the Labour Court will proceed to record its observations and in that even, the award dated 10th February, 2003 impugned in this writ petition will stand revived."

Thereafter, both the parties again led the evidence. The Labour Court on conclusion of proceedings, answered the reference in favour of the workman, in the manner indicated above. Hence the present writ petition.

We have heard learned Deputy Advocate General, Haryana and have also gone through the paper-book carefully.

The contention of learned Deputy Advocate General is that the workman had never completed 240 days of service with the petitioner-department. As such, there was no necessity to comply with the provisions of Section 25-F of the Act. Moreover, his services were terminated on 31.7.1994, in view of the Government instructions dated 17.8.1994, referred to above.

The contention is contrary to the evidence led before the Labour Court and, thus, is meritless. Undisputedly, it is now well settled proposition of law as held in **Range Forest Officer Vs. S.T. Hadmani JT 2002 (2) SC 238, Manager, Reserve Bank of India, Bangalore Vs. S. Mani and others, 2005 (5) SCC 100** and **R.M. Yellati Vs. The Asst. Executive Engineer, 2006 (1) SCC 106,** that burden of proof is on the workman to show that he had in fact worked for more than 240 days in the year preceding his termination. This burden has to be discharged by the workman by adducing cogent and sufficient evidence. A bare perusal of the impugned award shows that the workman has adequately discharged this burden. As against the oral version of the petitioner-department, the workman produced on record the log book (Ex.AW.4/1 before the Labour Court) for the period 1992 to 1997, wherein the name of workman figured. Further, he produced attendance sheets Ex.AW3/1 to Ex.AW3/10 showing his name as Serial No.3. These documents were also authenticated by AW.5

Rajesh Kumar, who also used to work with the respondent-workman. The workman also produced the identity card (Ex.W1)issued to him for the period from 1.11.1995 to 31.10.1996, thus negatived the plea of the petitioner-department of not working after July 1994. This documentary evidence has not been rebutted by the petitioner-department either before the Labour Court or before this Court. It does not lie in the mouth of Learned Deputy Advocate General as to under what circumstances the workman had been issued Identity Card for the period November 1995 to 31st October 1996, when his services were dispensed with way back on 31.7.1994, as alleged. The Labour Court on the strength of above-said documentary evidence produced by the workman, rightly concluded that the workman worked with the petitioner-department up to 31.10.1996. He had completed 240 days when his services were terminated and that his services were illegally terminated due to non-compliance of Section 25-F of the Act. The Labour Court has rightly extended the protection of Section 25-F of the Act to the workman, which in our opinion, is based on evidence produced on record and is a right recourse.

In view of what has been stated above, we find no infirmity or illegality in the findings arrived at by the Labour Court. No interference is called for. The petition is wholly without merit and the same is dismissed in limine.

(ARVIND KUMAR)
JUDGE

September 11,2006 **(J.S. NARANG)**
Jiten **JUDGE**